

MEETING OF FULL COUNCIL AS CORPORATE TRUSTEE

REPORT OF: Matt O'Neill EXECUTIVE DIRECTOR GROWTH AND SUSTAINABILITY

TITLE: Cudworth Park Bungalow

REPORT TO:	FULL COUNCIL
Date of Meeting	28th September 2023
Presented by	Cllr Franklin
Name of Charity	Cudworth Park

This report is being brought to Full Council in its role as Corporate Trustee under the Constitution.

1) Conflicts of interest

- 1.1 The Corporate Trustee is reminded of the Charity Commissions guidance on managing conflicts of interest.
- 1.2 Any member should declare a conflict of interest or potential conflict of interest prior to proceeding with consideration of this report. Any such conflict will be considered and dealt with prior to consideration of this report and if necessary, the affected member will be required to vacate the room until such time as the remaining members of the Corporate Trustee have reached a decision.

2) Objects of the Charity

- 2.1 The Charity is not formally registered at the Charity Commission but is the formal owner of Cudworth Park at Cudworth. This is public open space. It is maintained and operated by the Council in its local authority capacity as a public park along with other parks of which the Council is the Corporate Trustee.
- 2.2 The portion of Cudworth Park which is the subject of this report was laid out as a Public Park, Recreation and Pleasure Ground and swimming baths by Cudworth Miners Welfare Committee. It was then gifted to the Urban District of Cudworth by a conveyance dated 31 August 1928. The conveyance recites that "the Council covenant with the Trustees that they will hold the lands and hereditaments hereby conveyed for the benefit of the inhabitants of Cudworth as a Public Park Recreation or Pleasure Ground and Swimming Bath in perpetuity".

3) Purpose of report

- 3.1 The purpose of this report is to seek authority of Full Council as Corporate Trustee of the Charity to demolish of a former park keepers bungalow located within Cudworth Park.
- 3.2 As Trustee the Council has a duty to consider the proposals being put forward and decide the action to be taken upon behalf of the Trust, bearing in mind that the sole consideration has to be what is in the best interest of the Trust and its beneficiaries, not those of the Council and irrespective of other Council decisions and priorities.

Recommendations

It is recommended that the Corporate Trustee:

- 1. Confirms that it has met the requirement to ensure that the Charity's aims have been carried out for the public benefit with due regard to published Charity Commission guidance.**
- 2. Agrees that the Bungalow is no longer required for the purposes of the Trust.**
- 3. Approves, subject to Charity Commission approval, the demolition of the Bungalow and making good of the site at the Council's expense.**
- 4. Delegates authority to officers of the Council acting exclusively for the Charity to implement these recommendations and carry out all acts and deeds to give effect to these recommendations.**
- 5. Instructs officers of the Council acting exclusively for the Charity to arrange all necessary documents to permit the Council's (in its local authority capacity) contractors to enter the park site and carry out the demolition of the Bungalow and making good of the site, subject to the Council at all times agreeing to indemnify the Corporate Trustee by way of insurances or otherwise.**
- 6. Authorises officers acting exclusively for the Charity to permit the Council, its consultant and contractors, to enter the park site and execute the demolition and making good of the site, subject to the Council providing the Charity with appropriate indemnities.**

4. INTRODUCTION

- 4.1 The Charity owns the park, known as Cudworth Park or Cudworth Welfare Park. The Charity exists by nature of the way that the former Cudworth UDC acquired the Park on 31 August 1928 under trust for the benefit of the inhabitants of

Cudworth. The Council is the sole trustee of the Charity. The Council as Local Authority maintains and manages the park from Barnsley Council funds.

- 4.2 Within the park there stands a park keeper's bungalow which was constructed at a time when a park keeper was employed to work within the grounds and open and close the gates. It is a detached three bed bungalow with garden and garage. The bungalow is located on the periphery of the park but can only be accessed through the centre of the land along a track which is shared with users of the park.
- 4.5 The property is currently boarded up having been vacated in June 2020 by the last caretaker who continued their occupation of the premises into retirement.

5. PROPOSAL

- 5.1 The park is jointly managed by Property and the Parks Services. From the discussions that have taken place via the cluster working groups and subsequent member consultation, it was concluded that there is no longer a requirement for a park keeper to reside within the park and the property is surplus to requirements. There are no requirements within the trust to have a park keepers bungalow within the park.
- 5.2 No condition survey is available; however, the property has suffered damage as a result of flooding and a fallen tree. This property is also subject to on-going anti-social behaviour and vandalism. BPS Officers have inspected the asset, as the property is now in a poor state of repair it would require substantial investment (over £50k) to make it habitable once again.



- 5.3 There has been significant damage to the roof structure, enabling water and trespassers to gain access, following an asbestos survey of the property it has been confirmed that the roof contains asbestos, creating a health and safety risk. There has also been substantial fire damage to the internal construction of the property.

- 5.4 It should be noted that the Charity has no funds to maintain the asset. It's only asset is the land upon which the park sits. The Council as Local Authority has no annual budget to maintain this asset, however, it meets recurring costs to make the site safe following entry by intruders.
- 5.5 Therefore, the recommendation is that the bungalow is demolished. The cost of demolition is £17,400. This includes landscaping of the ground, and the land will be incorporated back into the wider park. The Council, as Local Authority, will, subject to formal approvals for funds being obtained, meet this cost and oversee the works.
- 5.6 The Council as Trustee has a duty to consider whether the proposals are in the best interest of the Trust. The Charity Commission have given clarification as to what they believe acting in the best interest of the Charity means. Trustees must:
- do what you and your co-trustees (and no one else) decide will best enable the charity to carry out its purposes
 - with your co-trustees, make balanced and adequately informed decisions, thinking about the long term as well as the short term
- 5.7 Will the decision be in furtherance of the Objects of the Charity?
- Yes, the demolition allows the park to be safe and visually pleasing for use as a recreation ground for the inhabitants of Cudworth and will extend the area available to recreation. This is at no expense to the Corporate Trustee, as it is proposed the local authority will cover all costs (subject to approval).

6. Implications for the Trustee

6.1 Public Benefit

The Corporate Trustee confirms that the proposed resolutions support the Objects of the Charity and meet the test of public benefit. Demolishing the bungalow manages a risk of harm to the public when using the park and allows the public to use the park safely for recreation.

6.2 Duty of Corporate Trustee

The Corporate Trustee is reminded of their obligations to act independently in the best interests of the Charity, regardless of their individual personal or political opinions.

7. Legal

- 7.1 As this land is held on trust by the Council as sole corporate trustee, whatever decisions the Council makes it must do so as the corporate trustee, rather than in its capacity as a local authority. In brief, this means that decisions taken must be in the best interests of the Trust and in accordance with the objects of the

Trust as outlined at paragraph 2 above.

- 7.2 The Charity Commission's "best practice" advice is to keep the management of the charity separate, as far as possible, from the business of the local authority. Moreover, the finances of the Trust must be kept separate from those of the Council. The assets must be accounted for separately and any income and expenditure should be channelled through discrete cost centres.
- 7.3 Within the trust document the predecessor Urban District Council of Cudworth has covenanted to hold the land and hereditaments in perpetuity. The Council has therefore made a legal commitment to keep the land and buildings thereon. The bungalow was built at the time of the conveyance and is shown on the conveyance plan. Should the Corporate Trustee decided that demolition was appropriate an application for consent to demolish must be made to the Charity Commission.
- 7.4 Members, as the Corporate Trustee must consider if it is in the best interests of the charity to demolish, or, if there is some value in the bungalow as it stands, other options should be considered to realise that value for use in furtherance of the Charities objectives. Any such alternative options need to be weighed against the objects of the charity and the current and continuing risks to members of the public using the park, in the context of the ongoing vandalism and anti-social behaviour.
- 7.5 Section 11 of the Trustee Act 2000 gives the power of delegation to the Corporate Trustee so that officers can implement any decision that the Corporate Trustee has taken.
- 7.6 Section 80 of the Building Act 1984 requires that a Notice of Intended Demolition is served on the Local Authority at least 6 weeks before the proposed demolition. Demolition work must also comply with the Construction (Design and management) Regulations 2015 and a health and safety plan must be produced by the principal contractor.

8. CONSULTATION

- 8.1 None

9. ALTERNATIVE OPTIONS CONSIDERED

- 9.1 A sale of the property could be considered. An valuation has been completed by an officer of the Council who is a RICS qualified surveyor to ascertain the market value of the property to inform the corporate trustee in their decision making for the purposes of this report (it should be noted as outlined below that were a sale to be progressed it is a statutory requirement for a report to be obtained from a designated adviser working exclusively for the Charity and it is therefore recommended that an external valuation be obtained, or any conflicts of interest are managed). Due to the property's poor condition, it is assumed that the sale would have to be from a cash buyer and offered for sale at a

property auction. In addition to keep control over the use of the property it is recommended the sale should be on a long leasehold basis. Based on the sale assumptions state and current condition, the property has a market value of £80,000.

- 9.2 If disposal was considered appropriate, the Corporate Trustee has the power to do so under Section 6 of the Trusts of Land and Appointment of Trustees Act 1996.
- 9.3 Disposal of “designated land”, meaning land held under trust for a specific purpose, requires Charity Commission approval. The land at Cudworth Park is designated land. However, in this instance, given that the area to be sold is small in comparison to the total area of the park and disposing of the land will not impact on the purpose for which the land is required to be used or how the charity furthers its purpose, an exemption to this requirement applies. Consent is not required.
- 9.4 The Corporate trustee must comply with the procedures under s. 117 – 121 Charities Act 2011 as follows:
 - a) it must obtain a written report from a designated adviser acting exclusively for the charity
 - b) it must advertise the disposal (unless the adviser recommends not to); (The notice period must be for at least a month and all representations have to be considered.)
 - c) the Trustee must decide that it is satisfied that the terms for the disposal are the best that can reasonably be obtained.
- 9.5 Following sale the Charity must not spend the capital receipt without consent of the Charity Commission. It could invest the monies and is permitted to spend the interest. Alternatively, it could make an application to the Charity Commission seeking approval to cover the legal and surveying fees incurred in effecting the sale. Permission could then be sought for the remaining funds to be transferred to the council to be ringfenced and spent in the upkeep of Cudworth park, or to be used for a capital investment in the park, such as new play equipment or benches.
- 9.6 Grant funding could be sought to renovate the building and bring it back in to use. However, any such use would have to meet the purposes of the trust and be ancillary to the park, such as a park café. The estimated cost of bringing the building back to a habitable standard is in excess of £50,000. The charity has no resources to bring such a project to fruition.
- 9.7 These options have not been recommended due to the ongoing risk to the health and safety of members of the public using the park, which the vacant building poses. In addition, given the location of the bungalow and access to it being through the park, not independent, consideration has been given to the negative impact this would have on park users. Vehicular access would bring private vehicles into the park. Demolition of the bungalow would preserve the recreational nature of the park in compliance with the objectives of the trust.

10. BACKGROUND PAPERS

Conflicts of interest: a guide for charity trustees (CC29) – available online at:
[Conflicts of interest: a guide for charity trustees - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/conflicts-of-interest-a-guide-for-charity-trustees)

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